

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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NOVARTIS PHARMA AG; NOVARTIS  
PHARMACEUTICALS CORPORATION;  
and NOVARTIS TECHNOLOGY LLC,

Plaintiffs,

-v-

REGENERON PHARMACEUTICALS,  
INC.,

Defendant,

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REGENERON PHARMACEUTICALS,  
INC.,

1:20-CV-690  
'631 Patent case

Counter Claimant,

-v-

NOVARTIS PHARMA AG; NOVARTIS  
PHARMACEUTICALS CORPORATION;  
and NOVARTIS TECHNOLOGY LLC,

Counter Defendants,

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REGENERON PHARMACEUTICALS,  
INC.,

Plaintiff,

-v-

1:21-CV-1066  
Antitrust case

NOVARTIS PHARMA AG; NOVARTIS  
TECHNOLOGY LLC; NOVARTIS  
PHARMACEUTICALS CORPORATION;  
and VETTER PHARMA  
INTERNATIONAL GMBH,

Defendants.  
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DAVID N. HURD  
United States District Judge

**MEMORANDUM-DECISION and ORDER**

**I. INTRODUCTION**

On June 19, 2020, pharmaceutical companies Novartis Pharma AG, Novartis Pharmaceuticals Corporation, and Novartis Technology LLC (together “Novartis”) filed a complaint (the “631 Patent case”) in this district alleging patent infringement against rival Regeneron Pharmaceuticals, Inc.

(“Regeneron”). Essentially, Novartis claims that it has a valid patent for syringes which come pre-filled with a certain medication used to treat degenerative eye disease. By extension, Novartis takes issue with Regeneron’s introduction of a competing prefilled syringe—designed to treat the same disease—into the market notwithstanding its patent.

On July 17, 2020, Regeneron fired back with a complaint of its own, alleging four antitrust claims and an additional claim for tortious interference with a contract (the “Antitrust case”). In addition to Novartis, Regeneron also directed some of these claims at Vetter Pharma International GMHB, a pharmaceutical supply chain provider whose niche in the medical marketplace includes filling Novartis’s—and formerly Regeneron’s—syringes.

According to Regeneron, Vetter and Novartis conspired together to circumvent a binding contract giving Regeneron an ownership interest in any of Vetter’s innovations. At the same time, Regeneron claims that Vetter and Novartis defrauded the Patent and Trademark Office (“PTO”) to secure for Novartis a stranglehold on the market for prefilled syringes designed to treat degenerative eye disease.

There are three separate pending motions in these two cases. First, in the ‘631 Patent case, Novartis and Regeneron have submitted their opening claim construction briefs in advance of a potential hearing as contemplated by *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996). Second, in

the Antitrust case, Novartis and Vetter have both moved to dismiss Regeneron's complaint against them in its entirety under Federal Rule of Civil Procedure ("Rule") 12(b)(6). And third, in both cases, Regeneron has moved for a stay in proceedings while the PTO conducts an *inter partes* review of the validity of Novartis's patent. All three motions, having been fully briefed, will now be decided on the submissions and without oral argument.

## II. BACKGROUND

At their core, these two cases are about three different drugs: EYLEA, made by Regeneron, and LUCENTIS and BEOVU, both made by Novartis.<sup>1</sup> *Regeneron Pharms., Inc. v. Novartis Pharma AG*, 1:21-CV-1066, Dkt. 87 ("Antitrust Compl."), ¶ 5. All three drugs are designed to inhibit the body's production of vascular endothelial growth factor ("VEGF"), a naturally occurring protein that erodes vision if overproduced, and in particularly extreme cases can cause blindness. *Id.* ¶¶ 5-6.

EYLEA, LUCENTIS, and BEOVU each need to be injected directly into the eye regularly to do their job as "anti-VEGF" agents. Antitrust Compl. ¶ 6. Traditionally, like most injectable liquids, EYLEA, LUCENTIS,

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<sup>1</sup> For the purposes of Novartis and Vetter's motions to dismiss under Rule 12(b)(6), the Court takes the facts in Regeneron's complaint as true. The Court notes that in addition to the redacted First Amended Complaint on the docket, Regeneron has also filed a "clean" version of that document under seal. The Court has consulted the clean version where necessary but will cite to the official version.

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